

EXHIBIT A



March 1, 2021

VIA EMAIL Timothy_Yager@fws.gov
Mr. Tim Yager
Deputy Refuge Manager
U.S. Fish & Wildlife Service
51 East 4th Street
Winona, MN 55987

Re: Cardinal to Hickory Creek 345 kV Transmission Line Project Application for an
Amended Right-of-Way, SF-299

Dear Mr. Yager:

The enclosed Application for Transportation and Utility Systems and Facilities on Federal Lands ("Application") is being submitted on behalf of ITC Midwest LLC ("ITCM") and Dairyland Power Cooperative (collectively, "Applicants") for an amended right-of-way permit for the Cardinal-Hickory Creek 345 kV Transmission Line Project ("Project"). The application fee of \$50 is being sent by separate cover.

The United States Fish & Wildlife Service ("USFWS") granted a Right-of-Way Permit ("2020 Permit") for the Project on September 8, 2020. The 2020 Permit authorizes the placement of 10 transmission line poles and conductors within a 38.98-acre right-of-way ("ROW") that runs along the active railway on the west and then east towards the former location of the Nelson Dewey generating plant ("2020 Approved Route").

Application Summary

The Applicants are pleased to submit this Application for an amended ROW for the Project because the proposed new route ("Application Route") will:

- avoid impacts to cultural resources as envisioned by USFWS and the other signatories to the Programmatic Agreement for the Project,
- reduces the Refuge acreage used for the ROW, and
- minimizes the effects of transmission lines that cross the Refuge.

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Consistent with the schedule for construction activities filed with the 2020 right-of-way application, and cited in the USFWS Compatibility Determination,¹ the Applicants need the amended ROW permit within six months of the date of this Application. After September of 2021, the Application Route will be infeasible due to costs and the inability of the Project to meet its 2023 in-service date. If USFWS is unable to meet this timeline, the Applicants request that they be notified as soon as this inability is known so that contracting and construction may proceed as originally planned.

In addition, to keep on schedule, the Applicants intend to proceed with construction of the Project in areas outside the Refuge as notices to proceed are granted by the Rural Utilities Service (“RUS”) including while the USFWS evaluates this application.

Approved Route and Section 106 Consultation Process

The 2020 Approved Route on the Iowa side just west of the Refuge follows two existing transmission lines west of the Refuge, which lines cross a burial site, 13CT3. The Draft Environmental Impact Statement (“DEIS”) was issued in November 2018. It identified six action alternatives and notes that in a constrained area on the bluffs in Iowa, “all six of the action alternatives follow the same corridor for approximately 0.9 miles near the community of Turkey River, Iowa.”² Archaeological sites 13CT4, 13CT3, and 13CT2 lay within the Direct [Area of Potential Effect] of the project (Kullen and House 2018).³

By letter dated December 22, 2018, the RUS made cultural reports available to Tribes and State Historic Preservation Offices. The report for the Hickory Creek to Iowa State Line Culture Resources identifies site 13CT3 as a prehistoric mound group located within the proposed Project corridor.⁴ To the best of Applicants’ knowledge, neither the Ho-Chunk Nation nor the Iowa State Historic Preservation Office (“IASHPO”) provided any response to the reports requesting avoidance of these burial mounds.

¹ Cardinal-Hickory Creek 345-kV Transmission Line Project, Record of Decision, Appendix A at 6.

² The 2020 Approved Route was proposed after an exhaustive analysis of Mississippi River crossing alternatives, including four alternatives that were outside the Refuge and determined to be infeasible, *see* Exh. 7, the Cardinal-Hickory Creek Transmission Line Project Alternative Crossings Analysis (4/2016), as well as 360th/Oak Road, discussed below.

³ DEIS, p. 260.

⁴ *ITC Hickory Creek to Iowa State Line Culture Resources* report, p. 1 and figure, sheet 1.

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The Final Environmental Impact Statement (“FEIS”) was issued in October 2019 and again notes that all action alternatives are within the Area of Potential Effect of 13CT3. Neither the Ho-Chunk Nation nor the IASHPO submitted any written comments requesting avoidance of burial mounds.

In July 2020, six months after the Record of Decision (“ROD”), during consultation pursuant to Section 106 of the National Historic Preservation Act, and the Programmatic Agreement for the Project, the Ho-Chunk Nation and the IASHPO recommended that a new route segment, B-IA3, be adopted to avoid mound site 13CT3. Following this request and a site visit in November 2020 with the Utilities and Ho-Chunk Tribal Historic Preservation Officer William Quackenbush, ITCM engaged in negotiations and discussions with the fee owner of the affected parcel and the Iowa Natural Heritage Foundation (“INHF”), which holds a conservation easement on the property that prohibits the placement of transmission poles. As a result of those efforts, and a request directly from Mr. Quackenbush to the fee owner to agree to use of B-IA3, the INHF agreed to consent to the alignment along B-IA3 and the fee owner agreed to grant a second easement across his property that would enable construction of the Project along B-IA3.

Application Route

The Application Route includes Segment B-IA3 and would continue to use the west-east section of the 2020 Approved Route ROW augmented by a 0.15-acre parcel located between the 2020 Approved ROW and the Refuge boundary along the railroad tracks. The Application Route would allow the Applicants to abandon plans to use 9.60-acres of USFWS-owned land and 0.48-acres of United States Army Corps of Engineers-owned land along the railroad tracks, resulting in a net reduction in the Refuge of 9.93 acres. As a result, the total ROW within the Refuge needed for the Project would be reduced from 38.98 acres to 29.06 acres. Of that, 19.84 acres is on USFWS-owned land. The table below summarizes the key acreages:

| | Acres in Refuge | Comparison to Transmission ROW Acres at Existing Stoneman Crossing |
|---|-----------------|--|
| Existing Stoneman Crossing (161 kV and 69 kV) | 31 | N/A |
| 2020 Approved Route | 38.98 | +7.79 acres transmission ROW in Refuge |
| Application Route | 29.06 | -1.94-acre transmission ROW in Refuge |

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The Application Route was infeasible under Iowa law prior to November 2020 because it did not follow a line of land division and the INHF wanted the Project to follow two existing transmission lines consistent with Iowa siting requirements and preferences. The INHF objected to any change in the route—without its consent to amend the easement, it was not possible to route on the underlying fee property anywhere other than within the transmission ROW covered by the existing utility easements.

The Applicants have determined that the Project could be constructed along the Application Route and meet the Project need to be in-service by the end of 2023 if the USFWS can grant approval for an amended ROW within six months of this Application.

Application Route Review Process

Interior Department and USFWS National Environmental Policy Act (“NEPA”) procedures anticipate the need for agency officials to make efficient decisions on relatively simple matters, such as issuance of an amended ROW for the Project. 50 CFR §29.21-2(a)(4); 340 FW 3, §3.10(A). Specifically, USFWS has clear authority to develop an Environmental Assessment and draft Finding of No New Significant Impact (“EA/FNNSI”) to incorporate new information into the administrative record previously prepared for a proposed action. 43 CFR 46.140(c). The EA/FNNSI is, in effect, a finding of no significant impacts “other than those already disclosed and analyzed in the EIS to which the EA is tiered.” 73 FR 61296 (Oct. 15, 2008). This approach is consistent with Council on Environmental Quality (“CEQ”) regulations at 40 CFR 1508.28 (1978) and the 2020 update at 40 CFR 1502.9(d)(4).

It would be inconsistent with the “rule of reason” of NEPA case law and regulations, and common sense, to require a Supplemental EIS on the environmental or other impacts associated with amending the ROW to not use 9.93 acres of Refuge land because this amendment would not be significant for the purposes of NEPA. Nor is there any reason to anticipate that the decision to add the particular 0.15 acres of land to the ROW would trigger significant impacts, especially as the resources of the area and the impacts of the transmission line on the Refuge have already been studied in the EIS and USFWS compatibility determination. There would be no tower or other facility constructed on the 0.15-acre area. The decision to approve the new ROW should be uncomplicated and lend itself to the most efficient available administrative procedures. Interior Department policy requires most EAs to be less than 10-15 pages and completed within 90 days. More complex EAs are to be not longer than 75 pages and completed within 180 days, with few exceptions. Secretarial Order No. 3355 (Aug. 31, 2017); Memorandum from Deputy Secretary, Additional Direction for Implementing Secretary's Order 3355 Regarding Environmental Assessments (Aug. 6, 2018).

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The RUS has already begun preparation of the analysis of the route modification, which should help USFWS make a timely decision about an amended ROW for the Project. The RUS is preparing a re-evaluation report with USFWS as a cooperating agency. The re-evaluation report includes an analysis of the Refuge crossing using the Application Route. USFWS may rely on environmental analysis prepared by a lead agency (here, RUS) when issuing a right-of-way. 50 CFR §29.21-2(4). If necessary, USFWS may also use a draft EA prepared by a project proponent. The Applicants understand, of course, that in either case USFWS is required to make its own determination as to the adequacy of the analysis. The Project owners are prepared to contribute information to the RUS and USFWS to help the agencies complete their analyses, though we fully understand that the agencies retain discretion whether and how to use the information.

Reservation of Rights

The Applicants must expressly and respectfully reserve all of their rights under the 2020 Permit to proceed with construction of the Project on the 2020 Approved Route unless and until USFWS grants the amended ROW permit for the route requested in this Application within six months of the date of this Application to ensure that the Project is constructed in time to meet its December 31, 2023 in-service date.

Closing

The Applicants request that the USFWS use this information contained in this submission to prepare an environmental assessment and issue a FNNSI in accordance with 43 CFR 46.140(c) and grant an amended ROW for the Application Route.

Should you have any questions about this Application, please contact me at the number listed below or Mark Rothfork listed as the ITCM contact on the enclosed SF299 . Mr. Rothfork's email address is: mrothfork@itctransco.com and cell phone is: (763) 257-6821.

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Sincerely,

/s/ Lisa Agrimonti

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